Nationwide Permit Regional Conditions in New Mexico

U.S. Army Corps of Engineers
Albuquerque District

REGIONAL CONDITIONS TO NATIONWIDE PERMITS
IN THE STATE OF NEW MEXICO

Effective Date: June 21, 2001

Regional Conditions Applicable to Specific Nationwide Permits within the State of New Mexico

a. Nationwide Permit No. 12 Utility Line Discharges. In New Mexico, utility activities crossing waterways wider than 200 feet require notification of the District Engineer in accordance with General Condition 13 (Notification).

b. Nationwide Permit No. 13 Bank Stabilization: In New Mexico, bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks) are limited to the placement of no more than 1/4 cubic yard of material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with General Condition 13 (Notification) and the Corps determines adverse environmental effects are minimal.

c. Nationwide Permit No. 14 Linear Transportation Crossings: In perennial waterways in New Mexico, culverts shall be designed to provide for fish passage. Culverts shall be designed and installed so that water flow shall be at least 0.8 feet deep (if practicable), the maximum hydraulic drop in the culvert shall not exceed 0.8 ft, and the maximum velocity shall not exceed 4.0 fps for culverts less than 100 feet long, 3.0 fps for culverts 100-200 feet long, and 2.0 fps for culverts longer than 200 feet. These flow criteria must be satisfied at least 90 percent of the time during the migration of the target species and age class.

d. Nationwide Permit No. 27 Stream and Wetland Restoration Activities. In New Mexico, restoration or enhancement projects that incorporate the use of rip-rap, channelization, or levees may be authorized only after the permittee notifies the District Engineer in accordance with General Condition 13 (Notification) and the Corps determines the adverse environmental effects are minimal.

e. Nationwide Permit No. 39 Residential, Commercial, and Institutional Developments. In New Mexico, this permit does not authorize channelization or relocation of any intermittent or perennial water course regardless of size or rate of flow.

f. Nationwide Permit No. 44 Mining Activities. This nationwide permit is **revoked** within the state of New Mexico.

Regional Conditions Applicable to All Nationwide Permits within the State of New Mexico

g. Activities Involving Fills in Perennial Waters or Wetlands Larger than 1/2 Acre. In New Mexico, any activity that involves filling in perennial waters or wetlands larger than 1/10 acre, may be authorized only after the permittee notifies the District Engineer in accordance with General Condition 13 (Notification); and any activity that exceeds 1/2 acre of fills to the waters shall **not** be authorized by any NWP.

h. Temporary Water Diversion. In New Mexico, flowing water shall be temporarily diverted away from the work area with non-erodible materials to reduce erosion, turbidity increases, and sedimentation. Affected area and duration of temporary water diversions shall be minimized to the extent practical. Suggested methods include, but are not limited to, the use of water bladders, sand bags, boards, or concrete barriers. After construction, the water will be returned to the original channel. Projects totally dewatering more than 100 linear feet of stream channel shall not be authorized by nationwide permit. Projects that temporarily divert flow from up to 100 linear feet of stream channel to one side of a channel, without totally dewatering the channel may be authorized without notification, provided the nationwide permit does not otherwise require notification. Any activity that involves the temporary diversion of the stream flow outside the previously existing channel may require notification of the District Engineer in accordance with General Condition 13 (Notification). Such notification will include a mitigation plan to compensate for any impacts to aquatic resource. Where practicable, the temporary diversion of waters shall be accomplished in accordance with best management practices included in the fact sheet entitled "Temporary Stream Diversion Procedures." (see Enclosure 2)

i. Non-Water Dependent Activities. In New Mexico, no NWP shall authorize an action in special aquatic sites, including wetlands, whose principal activity is not water dependent; unless the District Engineer has been notified in accordance with General Condition 13 (Notification).

j. Pre-Construction Notifications (PCNs). In New Mexico, PCNs requiring external notification shall also be sent to the appropriate city, county, or tribal agency for their comments. For those activities authorized by NWP No. 4, 13, 27, and 30 that require notification to the District Engineer (DE), the DE will notify the New Mexico Department of Game and Fish and other appropriate agencies.

k. Soil Erosion and Sediment Controls. In New Mexico, General Condition 3 (Soil Erosion and Sediment Controls) is amended by adding the following: Areas with exposed soil and fills during and following construction will be revegetated and protected from erosion by features designed to retain sediment on site. All control measures must be properly selected and installed in accordance with good engineering practices and manufacturers specifications. Sediment control measures shall be maintained in good working order. Sediment Control devices shall be inspected after significant storm events and repaired as necessary to restore sediment control capabilities. Sediment shall be removed from sediment traps (silt fences, sediment basins, etc) when the design capacity has been reduced by 50 percent. Permanent stabilization measures shall be initiated as soon as practicable (but in no case over 14 days after construction activity in that portion of the project ceased).

l. Pollution Controls. In New Mexico, any poured concrete will be contained in forms and/or placed behind/in cofferdams to prevent discharge into the watercourse. Use appropriate measures to prevent wastewater from concrete batching, vehicle wash-down, or aggregate processing from entering the waterway.

m. Equipment Inspection. In New Mexico, heavy equipment used in the project area will be inspected daily for leaks. No leaking equipment may be used in or near surface water.

n. Fuel and Petrochemicals. To prevent introduction of petrochemicals into waters of New Mexico, fuel, oil, hydraulic fluid, and lubricants stored within the floodplain must have a secondary containment system to prevent spills. Contain and remove any petrochemical spills, including contaminated soil, and dispose of these materials at an approved upland site. Refueling of equipment must not take place within 100 feet of any water of the U.S. including wetlands.

o. Vegetation Removal and Mitigation. In New Mexico, when appropriate and technically feasible, mitigation and/or compensation will be required to offset loss in functions of woody riparian or wetland vegetation. Woody riparian or wetland vegetation will not be removed before submitting a mitigation plan to the Corps, except where required to place permanent structures. Replace any woody riparian or wetland vegetation unavoidably lost at 2:1 ratio, insuring survival. Measures to prevent damage by beavers, wildlife, or livestock may be necessary until trees are established. Required revegetation plantings shall include only native or adapted plants which, after initial/seedling supplemental care period has terminated, thrive at the project site with no supplemental water or treatment. Trees planted for mitigation shall be only species native to the area and adapted to the site.

p. Aquatic Life Movements. In New Mexico, General Condition 4 (Aquatic Life Movements) is amended to require that all activities that would impede aquatic life movement or migration including those construction activities whose purpose is to impound water, will require efficient fish passage structures except when the structure is specifically designed to prevent such movement (barriers to prevent upstream movement of non-native fish to protect native fish species). In New Mexico indigenous species is interpreted to include all species native and non-native.

q. New Mexico State Threatened and Endangered Species. General Condition 11 (Endangered Species) is amended by adding the following: In New Mexico, any activity that occurs in habitat occupied by a New Mexico state threatened or endangered species identified under the authority of the New Mexico Wildlife Conservation Act (NMSA 17-2-37 through 17-2-46, 1978) or which is listed under the Federal Endangered Species Act, is not authorized by a nationwide permit prior to notification of the District Engineer in accordance with General Condition 13 (Notification) and consultation with the New Mexico Department of Game and Fish. (See also Designated Critical Resource Waters in New Mexico).

r. Important Spawning Areas. To comply with General Condition No. 20, Spawning Areas, nationwide permit activities in New Mexico are not authorized without notification if such activities would: (a) destroy important spawning areas; (b) be conducted in spawning habitats during spawning seasons for trout and Kokonee salmon (spawning for rainbow and cutthroat

trout is from March 15 through July 15, and for brown and brook trout and Kokonee salmon is from September 1 through November 30). For any nationwide permit activities occurring in these waters during spawning seasons, the permittee must notify the District Engineer in accordance with General Condition 13 (Notification), who will notify the appropriate agency before the activity is permitted.

Important spawning areas are defined as those waters that have been designated as High Quality Cold Water Fisheries (HQCWF) by the New Mexico State Environment Department, Surface Water Quality Bureau (SWQB). The SWQB defines a HQCWF as "a perennial stream reach in a minimally disturbed condition which has considerable aesthetic value and a superior coldwater fishery habitat. A stream reach so categorized must have water quality, stream bed characteristics, and other attributes of habitat sufficient to protect and maintain a propagating coldwater fishery (i.e., a population of reproducing salmonids)." A listing of all HQCWF can be found in the New Mexico Standards for Interstate and Intrastate Streams, 20 NMAC 6.1, effective January 23, 1995.

s. Gradient. General Condition 21 (Management of Water Flows) is amended by adding the following: In New Mexico, projects that will result in changes to local stream gradient, streambed elevation, direction, velocity of streamflow, or cause any significant changes in channel size, shape and streambank habitat (unless the project specifically designed to restore previously degraded and unstable streams) require notification to the DE in accordance with General Condition 13, (Notification).

t. Designated Critical Resource Waters in New Mexico. In New Mexico, a list of designated Critical Resource Waters has been published in accordance with General Condition 25 (Designated Critical Resource Waters). This list will be published on the Albuquerque District Regulatory home page and will be attached to nationwide permit summaries distributed to the public. A copy is attached (see Enclosure 1).

ADDITIONAL INFORMATION

The following provides additional information regarding minimization of impacts and compliance with existing General Conditions:

a. Permittees are reminded of the existing General Condition Number 18 which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies and junk materials are **not** suitable fill material. Also, General Condition Number 3 requires appropriate erosion and sediment controls (i.e., all fills must be properly stabilized to prevent erosion and siltation into water and/or wetlands.) Streambed material or other small aggregate material placed alone for bank stabilization will not meet General Condition Number 3.

b. Permittees are encouraged to mitigate project impacts prior to or concurrent with project construction. This issue continues to be a concern and the Corps prefers at this time to request that NWP notification submittals explicitly address prior to or concurrent mitigation or the reasons why mitigation cannot occur prior to or concurrent with project construction.

For additional information concerning the nationwide permits, the nationwide permit regional conditions, or for a written determination regarding a specific project, please contact the office below:

In New Mexico: Chief, Regulatory Branch, Albuquerque District, US Army Corps of Engineers, 4101 Jefferson Plaza, N.E., Albuquerque, NM 87109-3435, Telephone: (505) 342-3283. E-Mail: cespa-od-r@usace.army.mil

In Northwestern New Mexico and South Central Colorado: Durango Regulatory Office, 278 Sawyer Drive, Suite #1, Durango, Colorado 81303-7995, Telephone: (970) 375-9452

In Southeastern Colorado: Southern Colorado Regulatory Office, 720 North Main Street, Room 205, Pueblo, Colorado 81003-3046, Telephone: (719) 543-9459

In Southern New Mexico and Western Texas: El Paso Regulatory Office, P.O. Box 6096, Ft. Bliss, Texas 79906-0096, Telephone: (915) 568-1359

Information about the U.S. Army Corps of Engineers regulatory program, including nationwide permits and regional conditions, may also be accessed on our Internet page: http://www.spa.usace.army.mil/reg/

Enclosure 1.

Designated Critical Resource Waters in New Mexico

In New Mexico, the following list of designated Critical Resource Waters is published in accordance with General Condition 25 (Designated Critical Resource Waters). See General Condition 25 of the nationwide permits for restrictions of nationwide permit use.

Critical Herp Habitat
Critical Herp habitat is defined as that habitat which is known to be occupied by state threatened and endangered reptiles and amphibians that are not listed as threatened and endangered under the Federal Endangered Species Act.

All perennial reaches of the Gila River, the San Francisco River and Mule Creek. These waters are native habitat for the Narrowhead garter snake (Thamnophis rufipunctatus) and the Mexican garter snake (Thamnophis eques).

Critical Invertebrate Habitat
Critical invertebrate habitat is defined as that habitat which is known to be occupied by state threatened and endangered invertebrates that are not listed as threatened and endangered under the Federal Endangered Species Act.

Blue Spring and the associated springbrook riparian corridor, Eddy County, NM. Blue Spring is the primary hydrologic source for perennial reaches of the Black River. Blue Spring provides aquatic habitat for the endemic Pecos springsnail (Pyrulopsis pecosensis), and the land snail, Vertigo ovata.

Willow Spring, "Willow Spring Ranch" (formerly Cienega Ranch), Socorro Co., NM. Native habitat for the endemic Chupadera springsnail (Pyrgulopsis chupaderae).

Torreon Spring, Pound Ranch, Socorro Co., NM. Native habitat for the endemic New Mexico springsnail (Pyrgulopsis neomexicana).

Ojo Caliente-Warm Spring wetland complex, Socorro Co., NM. Native habitat for the endemic Alamosa springsnail (Tryonia alamosae).

Sedillo Spring, Socorro Co., NM. Native habitat for the Socorro isopod.

Canadian River drainage, including perennial tributaries (Conchas River, Trementina Creek, Ute River), Conchas Lake, and Ute Reservoir. Habitat for the paper pondshell mussel (Utterbackia imbecillis).

All perennial reaches of the Black River, Eddy county. Native habitat for the only population of the Texas hornshell (Popenaias popei) in New Mexico.

Critical Fish Habitat
Critical fish habitat is defined as that habitat which is known to be occupied by state threatened and endangered fish that are not listed as threatened and endangered under the Federal Endangered Species Act.

Gila chub (Gila intermedia).
Mule Creek (a San Francisco River tributary) and
Turkey Creek (a Gila River tributary)

Roundtail chub (Gila intermedia).
Gila River: New Mexico reaches of the Upper East Fork of the Gila River, the Lower Middle fork of the Gila River and the lower most West Fork of the Gila River.
San Juan River Drainage: New Mexico reaches of the
Mancos River,
La Plata River,
Florida River and
Animas River

Arkansas River speckled chub (Macrhybopsis aestivalis tetranemus)
South Canadian River, downstream of Ute dam to the Texas/New Mexico border.

Suckermouth minnow (Phenocobius mirabilis)
South Canadian and
Dry Cimarron River

Southern redbelly dace (Phoxinus erythrogaster)
Headwaters of the Mora River,
including Coyote Creek and
tributaries to Black Lake

Zuni bluehead sucker (Catastomus discobolus yarrowi)
Rio Nutria upstream of the mouth of Nutria Box Canyon near the eastern boundary of the Zuni Indian Reservation and the Agua Remora.

Enclosure 1, Designated Critical Resource Waters in NM (cont.)

Blue Sucker (Cycleptus elongatus)
Pecos River, downstream from Brantley Dam to the Texas - New Mexico border and the lower reaches of the Black River

Gray Redhorse (Moxostoma congestum)
Pecos River, from Carlsbad downstream to the New Mexico - Texas border and the lower reaches of the Black River.

Mexican tetra (Astyanas mexicanus)
Pecos River and associated floodplain habitats from Bitter Lake National Wildlife Refuge downstream to the New Mexico - Texas border, the
Black River and
Delaware River

White Sands pupfish (Cyprinidon tularosa)
All perennial aquatic habitat within the U. S. Army White Sands Missile Range and the Holloman Air Force Base.

Pecos pupfish (Cyprinidon pecosensis)
Pecos River and associated floodplain habitats from Bitter Lake National Wildlife Refuge downstream to near Malaga Bend
Gypsum sinkholes, isolated oxbows and artificial impoundments on Bitter Lake National Wildlife Refuge and habitats associated with Bottomless Lakes State Park.

Bigscale Logperch (Percina macrolepida)
Pecos River between Santa Rosa and Fort Sumner Reservoir,
the lower Pecos River near Brantley Reservoir and the
Black River

Greenthroat darter (Etheostoma lepidum)
Bitter Creek and gravel-bottomed ponds on Bitter Lake National Wildlife Refuge,
Cottonwood Creek, Blue Spring and Rattlesnake Springs in Carlsbad Caverns National Park

SPECIAL TROUT WATERS

Special trout waters are managed to provide anglers with the opportunity to experience a superior high qualtiy fishing. These waters have reduced bag limits or are catch and release. Accordingly, they need to be protected during construction activities permitted under CWA Sec. 404. No activities are authorized under any NWP for activities occurring these waters without PCN to the appropriate state agencies.

Pecos River Drainage
Pecos River “Box” from 1/2 mile above the confluence of the Mora and Pecos, upstream 1-1/2 miles to 1/4 mile above Cowles Bridge
Pecos River in the Pecos Wilderness above Pecos Falls
Doctor Creek from 1/4 mile above its confluence with Holy Ghost Creek, upstream to its headwaters
Jacks Creek from the waterfalls located 1/4 mile downstream from NM Hwy 63 crossing, upstream to its headwaters
Rio Valdez in the Pecos Wilderness form 1/4 mile below Smith Cabin, upstream to its headwaters

Jemez River Drainage
Rio Cebolla from the Seven Springs Day Use Area upstream to its headwaters
Rio Guadalupe from Porter Landing Bridge 1.3 miles downstream to Llano Loco Spring
San Antonio River from the Baca Location boundary downstream 2 miles.

San Juan River Drainage
San Juan River from Navajo Dam downstream 3-3/4 miles to east side of Section 16.

Rio Costilla Drainage
Valle Vidal - all streams in the Valle Vidal including Shuree Lakes
Rio Costilla from the Valle Vidal Boundary 2.4 miles downstream to Latir Creek

Chama River Drainage
All waters within the Sargent Wildlife Area including Nabor Creek and Nabor Lake, Rio Chama, Rio Chamita and Sexto Creek
Chama River 2.9 miles within the Rio Chama Wildlife and Fishing Area
Chama River from Abiquiu Dam downstream 7 miles to the U.S. bridge at Abiquiu

Upper Rio Grande Drainage and its tributaries
Rio Grande from Colorado line downstream to the Taos Junction Bridge
Red River from the confluence of Goose Creek for 1 mile upstream as

Enclosure 1, Designated Critical Resource Waters in NM (cont.)

posted
Red River from 1/2 mile below walking bridge at the Red River State Hatchery downstream to confluence with the Rio Grande
Rio De Los Pinos from USFS Roads 284 & 87A, 2-1/2 miles upstream to private land
Rio Pueblo between the bridge at Mile Marker 55 on State Hwy 518 upstream 1 mile to Canon Tio Maes Trailhead, as posted

Lower Rio Grande from Elephant Butte Dam downstream to Caballo Lake including Caballo Lake

Cimarron River from east end of Tolby Campground downstream 1.4 miles to first U.S. 64 bridge

Rio Las Animas within the Gila National Forest, Black Ranger District

Gilita Creek from the Gila Wilderness downstream 5 miles to Snow Creek

Rio Ruidoso along U. S. 70 in Ruidoso Downs from Merriam Drive downstream 0.7 miles

CRITICAL DESIGNATED RESOURCE AREAS FOR RIO GRANDE CUTTHROAT

For any NWP activities occurring in waters where Rio Grande cutthroats occur, the permittee must notify the Corps in accordance with the Notification general condition, who will provide PCN for review, to the appropriate agency before the activity is permitted. All locations where Rio Grande cutthroat populations are known to occur are:

CANADIAN DRAINAGE

Colfax County
American Creek
Clear Creek
Leandro Creek
Middle Ponil Creek
Ricardo Creek
South Ponil Creek

Mora County
Luna Creek (Near Mora)
Mccrystal Creek
Murphy Creek
Santiago Creek

PECOS DRAINAGE

Mora County
Jarosa Creek (Below Pecos Falls)
Pecos River (Above the falls)
Rio Valdez
Rito Azul (Rito de Las Chimayosos)
Rito De Los Chimayosos
Rito Del Padre
Rito Maestas (Rio del Padre)

San Miguel County
Cave Creek
Dalton Creek
Doctor Creek
Indian Creek
Macho Creek
Jacks Creek

RIO GRANDE DRAINAGE

Rio Arriba County
American Creek (Jemez)
Canjillon Creek
Canones Creek (Jemez)
Cecilia Creek (Rio Gallina Basin)
Chihuahuenos Creek (Jemez Mts)
Clear Creek (Jemez)
El Rito Creek
El Rito Creek Upper (Fifteen Springs)
Jaroso Creek (El Rito)
Nabor Creek (Sergent Wildlife Area)
Polvadera Creek (Canones Creek)
Resumidero Creek & Oso Creek (San Pedro Parks)
Rio de La Cebolla (Rio Quemado-Truchas)
Rio De Las Vacas (Perchas, Anastacio)

Enclosure 1, Designated Critical Resource Waters in NM (cont.)

Rio De Truchas (Rio Quemado)
Rio Del Oso (Chama)
Rio Nutrias (Tres Piedras)
Rio Puerco West
Rio Santa Barbara (east fork)
Rio Santa Barbara (middle fork)
Rio Santa Barbara (West Fork)
Rio Tusas - little Tusas
Rio Tusas-lower
Rio Tusas-upper
Rito Cafe
Rito De Las Perchas
Tanques Creek (Tres Piedras)
Tio Grande (Tres Piedras)
Willow Creek (Jicarilla)-restored-1998

Sandoval County
Cochiti Creek watershed
Peralta Creek
La Jara Creek (Rio Puerco)
Rio Cebolla
Rito de las Palomas (Jemez)
Rito de Los Pinos (Jemez)

Santa Fe County
Rio Capulin
Rio Frijoles Creek
Rio Nambe

Sierra County
Rio Las Animas, including the Holden Prong and Murphy Place

Taos County
Red River Drainage
Bitter Creek
Cabresto Creek
Cabresto Creek (Lake Fork)
Columbine Creek (Deer, Placier, Willow)
Sawmill Creek (Red River)

Valle Vidal Drainage
Rio Costilla
Comanche Creek
Fernandez Creek (Comanche)
Little Costilla Creek (Comanche)
Powderhouse Creek
Chuckwagon Creek (Comanche)
Vidal Creek (Comanche)

Hondo Drainage
Gavilan Canyon Creek (Rio Hondo de Taos)
Italianos Creek (Rio Hondo de Taos)
Rio Hondo -South Fork (Wheeler Peak)
Yerba Creek (Rio Hondo de Taos)

Rio Grande Del Rancho Drainage
Fowler Creek (Rio Grande Del Rancho)
Saloz Creek (Rio Grande del Rancho)
Jaroso Creek/ Saloz (Rio Grande del Rancho)
Rio Chiquito (Rio Grande del Rancho)

Rio Pueblo Drainage
Agua Piedra (Rio Pueblo)
Alamitos Creek (Rio Pueblo)
Frijoles Creek (Rito de la Olla)
Indian Canyon (Penasco)
Agua Caliente (Pilar)
La Cueva Creek
Osha Creek
Palociento Creek
Rito de la Olla (Pot Creek)
Rito de la Presa
Rito del Medio (Questa/El Rito)
Rito Primero
San Cristobal Creek
Sardinas (near la Pressa)
Tienditas Creek (Valle Escondito)
West Latir Creek

TULAROSA DRAINAGE
Otero County
Indian Creek (Three Rivers)

Enclosure 2.

Temporary Stream Diversion Procedures

The following is a typical procedure for temporary or short duration stream channel diversions. Temporary diversions are often required for installing or replacing culverts, installing underground utility lines, or for similar reasons where a dry channel is required. Properly constructed temporary stream diversion channels allow for a project to proceed while fish passage and water quality are maintained.

1. The diversion channel must be capable of carrying anticipated stream flows during the construction period.

2. During excavation, the diversion channel must be isolated from the stream to be diverted at the upstream and downstream ends of the diversion channel.

3. The bed and banks of the diversion channel must be constructed of material that will not erode at expected flows. In most cases, the diversion channel should be completely lined with filter fabric, visqueen or some other similar material. Seams in the liner should be overlapped, with the opening facing downstream. The channel liner should be anchored with rocks or sandbags to hold it in place.

4. Diversion of flow into the temporary diversion channel must be conducted by first removing the downstream plug, then removing the upstream plug, then closing the upstream end and then the downstream end of the natural channel and the diverted stream.

5. Fish that become stranded in dewatered channels must be immediately captured and returned to the active channel without further harm.

6. If a tributary stream enters the former channel within the diversion area, connect it in a suitable manner to the new channel.

7. Fish passage in the temporary diversion channel must be maintained at all times, unless otherwise approved by the New Mexico Game and Fish Department.

8. Redivision of flow into the natural stream channel must be conducted by removing the downstream plug from the natural channel and then the upstream plug, then closing the upstream end and then the downstream end of the diversion channel.

9. All man-made materials shall be removed from the diversion channel, the channel shall be backfilled, and stream banks stabilized. All disturbed areas shall be revegetated with naturally occurring woody plants and grasses if appropriate.